The Australian Government the Treasury

ASU Submission

2016 consultation on proposed changes to the *Superannuation Guarantee (Administration) Act 1992 (SGAA)*

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Table of Contents

Foreword

The Australian Services Union (ASU) is one of Australia's largest Unions, representing approximately 135,000 members.

The ASU was created in 1993. It brought together three large unions; namely, the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Current ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:

- Local government
- State government
- Social and community services
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and SA).

The ASU also has members in every state and territory of Australia, as well most regional centres.

Introduction

1. The ASU refers to the Financial System Inquiry 2014 (FSI) Recommendation 12: *Provide all employees with the ability to choose the fund into which their Superannuation Guarantee contributions are paid*[1] and welcomes the opportunity to respond to the Consultation on the Australian Government's proposal to amend the *Superannuation Guarantee (Administration) Act 1992* (SGAA) so that deemed compliance with choice for contributions under enterprise agreements and workplace determinations would be removed from 1 July 2016.

[1] The Australian Government the Treasury , *Financial System Inquiry: Final Report*, November 2014, p. 131

2. As a consequence of the terms of reference of the FSI[2], the Treasury reported that a 'significant minority' of employees cannot choose their superannuation fund and that this causes employees to have multiple superannuation accounts that incur multiple sets of fees and insurance premiums[3]. In order to ameliorate the problem identified, the report recommended that the SGAA be changed in the interests of ensuring greater freedom of choice and the Australian Government has adopted the recommendation[4].

3. In this submission the ASU will argue that the Australian Government's intent to change the SGAA to allow for "choice" is presented as a panacea to the "problems" of superannuation. But what are the problems of superannuation and what is "choice" trying to address or correct? The facts are that SGAA is working very well and delivering superannuation benefits to members. The ASU is of the view regarding the current system: "If it ain't broke don't fix it!"

4. The Government's real agenda it seems is to favour the Retail funds (which are mainly owned by the big banks) that were previously unsuccessful at meeting the standards required of a default fund to disrupt a market that is already consistently delivering outstanding benefits to members. When this legislation is coupled with the Government's proposed governance legislation[5] that will enact a requirement to appoint more "independents" to superannuation trustee boards and to weaken penalties for employers who do not pay their super contributions on time, this is really an ideological legislative attack on the current system of superannuation which is not in the best interests of super fund members.

5. "Choice" is presented as an end in itself and that it may in theory increase competition and lower fees. However, the real test should be: what is the best outcome for members? Not a facile notion of choice. Choice is not the answer. The benefit to the member is the answer and the current system consistently delivers superior results compared to any Retail fund.

6. Therefore, the ASU submits that the current system is working very well and that the status quo should remain because choice as such, will not deliver outcomes in the interests of superannuation members. The ASU can confidently say on behalf of its members, who would be proportionately represented amongst those to be immediately

[2] The Australian Government, *Financial System Inquiry*, http://fsi.gov.au/terms-of-reference/ (accessed 12 January 2016).
[3] The Australian Government the Treasury 2014
[4] The Australian Government response to the Financial System Inquiry, 20 October 2015, http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/Govt%20response%20to%20the%20FSI (accessed 12 January 2016).
[5] The Australian Government, *Superannuation Legislation Amendment (Trustee Governance) Bill 2015*, 16 September 2015, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5548 (accessed 12 January 2016).

affected by this legislative change, that there is virtually no agitation for the proposed extension of “choice”. In fact, ASU members insist that when we negotiate enterprise agreements and awards that the Union lock-in existing Industry funds because they see this outcome as the best for themselves.

7. Superannuation benefits to members are actually improved by enterprise agreement and Award Super clauses. Higher levels of default insurance cover, higher levels than the prevailing Super Guarantee and making these provisions legally enforceable are just some of the advantages of the current system.

8. Rather than offer an illusion of choice that will have no real benefit for people, the ASU recommends that the Government; instead, reforms the current regressive system that affords generous tax-concessions to high income earners and particularly very high income earners by charging the concessional rate of 15 per cent to those retirees who receive annual superannuation incomes of more than $75,000. This would address some of the inequities in the current system and improve real world outcomes for the greater majority of Australian tax-payers.

The “choice” fallacy

9. The final FSI report came to a view that the benefit of choice was in providing flexibility for members and lowering fees through greater competition. It also asserted that the lack of choice contributed to employees having multiple accounts and paying multiple sets of fees. The ASU seeks to challenge these assumptions as an oversimplified view of the world. It relies on the liberal market orthodoxy which does not reflect the real world. What happens in the real world?

10. Firstly, “choice’ has been characterised by the current Government as missing from the Australian superannuation system. However, “choice” was introduced in 2005 by the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* (Cth). Therefore, the greater proportion of working Australians have had over a decade to activate choice over their superannuation fund. What has been the effect in the real world? The answer is, Australians have either not exercised choice per se or have consciously opted to remain in their default fund. This was the conclusion of the final report of the Australian Government *Super System Review: Final Report* at page 8:

> The Panel therefore accepts that the model of member-driven competition through 'choice of fund' (in the form of SG Act choice and consequent portability) has struggled to deliver a competitive market that reduces costs for members.[6]

11. This is not unusual real world behaviour, we have also seen this in the retail electricity market in Victoria where after 20 years of privatisation and 15 years of being able to choose between dozens of competing retailers, great numbers of consumers continue to elect to remain with their original default provider.

12. The Productivity Commission also recognises this behaviour by employees at page 36 of their Report No. 60: *Default Superannuation Funds in Modern Awards*[7]. At Box 2.2 the Commission asks the question: How many employees exercise choice of fund? And answers, as follows:

> - There are no data on the incidence of choice of fund by employees who derive their superannuation fund in accordance with a modern award. More broadly, there are a variety of estimates of how many employees (employed under a range of different industrial instruments, not just awards) actively choose their superannuation fund in any given year.
> - 44 per cent of employees do not take any active role in determining the fund to which their contributions are made, and a further 26 per cent select the default fund offered by the employer, which means about 70 per cent of employees are members of the default fund selected by their employer (ABS 2007).
> - 50 to 70 per cent of employees are members of their employer's default fund (Colmar Brunton 2010a).
> - Just over 27 per cent of the 609 employees who participated in a survey commissioned by the Association of Superannuation Funds Australia actively chose their employer's default fund, 20 per cent did not exercise choice and were placed in the employer's default fund, and 23 per cent of employees did not have choice of fund, which means, in total, just over 70 per cent of the employees surveyed were members of the default fund selected by their employer (ASFA, sub. DR75). Measures of whether or not a member is in the default investment option might also provide some indication of choice of fund, although a member who chooses a fund might also actively choose to be in the fund's default investment option.
> - Of those who default into their employer's default fund, roughly 80 per cent are in the default investment option. Anecdotal evidence suggests that about 20 per cent of these employees actively chose to be there, meaning that about 60 per cent of members do not make active superannuation choices (Australian Government 2010a).

[6] 30 June 2010.
[7] 5 October 2012.

- 18 per cent of employees do not accept the default investment position within their fund (Super Ratings 2006; Gallery, Gallery and McDougall 2010).

Therefore, choice in of itself does not necessarily influence behaviour. While people who do make a choice, whether an active or passive one, tend to stay with a Default fund.

Will competition always lower prices?

13. The final FSI report assumes that "choice" will lower costs and fees to superannuation fund members because it will increase market competition. Whilst it is true that competition can sometimes lower prices, the mere offer of "choice" in a market will not increase competition in of itself. Let's look at some examples.

14. The Victorian Electricity Industry – When the Victorian electricity industry was privatised some 20 years ago and then choice of retailers was introduced some 15 years ago; according to liberal market theory, this would deliver a better and cheaper product for household consumers. The fact is that electricity prices for Victorian consumers have not diminished but in fact have risen enormously. While it is also true that prices rose for states where the assets remained publicly owned; for example, NSW and Queensland – the point is that in the privatised states of Victoria and South Australia despite the existence of a competition model for years, prices rose as much if not more than in the states retaining publicly owned assets.

15. The Retail Banking Sector – Again, despite there being many competitor banks and Government intervention encouraging consumers to switch banks in pursuit of better deals, a great number of consumers elect to remain with their existing bank. Also, when consumers do want to change; for example, to save on a better mortgage rate, the incentive is so minute – sometimes a fraction of a per cent in rates – that the lack of competition militates against opting for choice.

16. Private health insurance – There is also choice for the consumer amongst a number of private health insurers and this should, according to dictates of liberal market theory, result in a lower cost to consumers and with a broader range of prices. Instead, what has developed over the last 6 to 7 years is that all the major insurers have all increased their prices between 6 and 8 per cent per annum in spite of inflation running at 2 to 3 per cent per annum over this period. Choice and the competitive model have failed to deliver reduced costs for the health industry consumer. As we noted in the above paragraphs regarding the exercise of choice that in spite of a variety of private

health insurers offering services, Medibank Private and Bupa account for 56 per cent of policies in a completely privatised market[8].

17. Retail petrol sector – In spite of the thousands of outlets across the country, when the motorist looks at filling a tank for their vehicle they usually find very little price differential between one outlet and the next. Furthermore, miraculously just before the commencement of a public holiday, virtually all outlets simultaneously increase their prices providing a distinct lack of competition and choice.

18. With respect to the assertion that lack of choice contributed to employees having multiple accounts and paying multiple sets of fees, this is easily remedied by the member rolling-over 1 or more superannuation accounts into their preferred account by filling out a simple form which authorises the recipient trustee to complete the relevant paperwork.

19. Furthermore, it is a well-known fact that the Default funds charge members substantially less fees than the Retail funds as the table shows:

Table 1: Summary of fees for both MySuper products and Choice of fund products.[9]

Average fee on a 50k balance			
Type of fund	**2014 MySuper**	**2014 Choice**	**2011 Choice**
Not-for-profit	$501	$506	$508
Retail Master Trust	$586	$876	$982
Overall Industry	$520	$667	$726

The predominant reason that Default funds have consistently outperformed Retail funds on cost to members is because this standard has been a principle of the high performing not-for-profit Industry funds (up to and following the introduction of regulatory settings forcing fee reduction).

20. If the Government expects Australians to believe that consumers can and will drive greater market flexibility through their choices; thereby increasing the requisite competition to drive down cost for the consumer, they are mistaken. Australians have learned that incentives to shop around are not delivered by choice alone. Australians will be let down by this ideological approach that really seeks to destabilise a superannuation system that is performing very well.

[8] Productivity Commission, *Efficiency in Health: Productivity Commission Research Paper*, April 2015.
[9] 'Low super fees far from best', SuperRatings Media Release, 27 April 2015, via http://www.superratings.com.au/media/mediarelease/27042015 (accessed 12 January 2016).

How is the current superannuation system performing?

21. According to the 2012 Productivity Commission report on *Default Superannuation Funds in Modern Awards*[10], it said at page 8:

> The current default superannuation arrangements have resulted in net returns of default funds (that is, those listed in modern awards) generally exceeding those of non-default funds. Over the eight years to 2011, default funds in modern awards averaged an after-tax rate of return of 6.4 per cent, compared with 5.5 per cent for non-default funds.

The commission repeats this information in tabular form on pages 72 and 73 of the report.

22. SuperRatings is an expert research house which is privately owned and amongst their 2015 awards, the Industry funds were the best performing in most categories. For example, from 2010 to 2015 the 'Fund of the Year' has been awarded to an Industry fund; also, the Industry funds won 'Choice Super Fund of the Year' award and 'Pension of the Year' 5 years running; finally, 'Super of the Year' was won by an Industry fund 5 years in a row[11]. SuperRatings also said in an August 2015 media release:

> Not-for-profit superfunds are once again prominent in the top 10 funds this year, with the Commonwealth Superannuation Corporation Public Sector Superannuation Accumulation Plan (CSS PSSap) taking out the number one spot.[12]

23. The experts in the independent agencies are pleading for governments to stop tinkering with super because there is too much at stake and what is needed is consistency. For example, on 29 October 2015, SuperRatings founder Jeff Bresnahan said:

> We continue to see incremental improvements across the industry, which is good news for most Australians, however, more importantly we need regulatory stability, instead of constant changes from the Government of the day, …Incredibly, we have seen seven ministers responsible for superannuation during the past eight years. If a corporate entity had this many chief executives during the same period, each with their own strategies and direction, the company would be broke. ***The superannuation system is far from broken, in fact it is booming, however, it needs consistency.*** This constant uncertainty creates a loss of confidence which can have a big impact on individual members and their ability to trust and plan for their future. Let the funds get on with what they do best, in a stable

[10] Productivity Commission 2012.
[11] SuperRatings, *SuperRatings Award Winners 2016*, via http://www.superratings.com.au/ratings/winners (accessed 12 January 2016). "SuperRatings' prestigious awards seek to recognise the best of the best within the superannuation industry."
[12] 'Top Ten Superannuation And Pension Funds 2015: How Did Your Fund Compare?', SuperRatings Media Release, 5 August 2015, via http://www.superratings.com.au/media/mediarelease/050815 (accessed 12 January 2016).

> and certain environment, as they continue to improve the long term benefits for working and retired Australians,[13] [emphasis added.]

The ASU believes that the Government should take head of Mr. Bresnahan advice and cease tinkering with the superannuation system, as contemplated by the proposed legislative changes to the SGAA.

24. Furthermore, in a media release by Industry Super Australia commenting on the release of the above mentioned SuperRatings analysis of October 2015 returns, it was stated that:

> 'the performance of Australia's superannuation funds provides further evidence that the government's proposed changes to not-for-profit super funds and the default scheme are misguided and unnecessary.'[14]

David Whiteley, Chief Executive of Industry Super Australia noted:

> Consistent outperformance by the industry super fund sector over the bank-owned super fund sector embodies the differences between for-profit and not-for-profit governance arrangements. There is no doubt that the governance of industry super funds is a key driver of their superior outperformance. …Today's data further underlines the need to protect and maintain the current default superannuation system which ensures that only high performing super funds can be used as default funds for the majority of members who don't choose.[15]

The ASU believes the current superannuation system is working well and that this latest tinkering by the Australian Government will not assist it but harm it.

What are the economic and social benefits of the current superannuation system?

25. The ASU believes that the current system delivers various benefits to its members. As well as delivering consistently outstanding returns and at lower cost to members, it also delivers other benefits. For example, many of the default funds provide generous income protection or insurance for members if they suffer from short or long-term illness. Income protection policies offered by the Default funds can provide between 70 to 90 per cent of a person's salary ranging from months to years; which is an incredible comfort to the member and their families in a time of emotional and financial stress.

26. Unions through placing Super Clauses in enterprise agreements and awards can negotiate greater benefits for members such as contributions above the

[13] 'Australia's Best Superannuation Funds', SuperRatings Media Release, 29 October 2015, via http://www.superratings.com.au/media/mediarelease/291015 (accessed 12 January 2016).
[14] 'Outperformance by Industry Super Funds Highlights Success of All-Profits To Members Culture', Industry Super Australia Media Release, 22 October 2015, via http://www.industrysuperaustralia.com/media/media-releases/outperformance-by-industry-super-funds-highlights-success-of-all-profits/#sthash.JWKzzpeQ.dpuf (accessed 12 January 2016).
[15] *Ibid*.

Superannuation Guarantee, payment by an employer in whole or part of the administrative fees or insurance premiums, guaranteed levels of benefits in the event of resignation, retirement or redundancy, while improving member superannuation education and financial advice.

27. More than 50 per cent of ASU members are women, the greater majority of whom work in the Social and Community Services industry (SACS) or in a clerical occupation and can be considered low paid due to the prevalence of award reliant employees in those feminised industries and occupations. The ASU is concerned that the default provisions for compulsory superannuation contributions in the Modern Awards remain intact to ensure that minimum standards for superannuation investment remain accessible to the lowest paid Australian tax-payers who are otherwise marginalised by their economic status.

What about some real reform?

28. If the Australian Government is serious about improving superannuation for members rather than giving them an illusion of choice to no proven or expected benefit for the individual, it should reform the current system which is unfortunately heavily weighted in favour of high income earners.

29. The current system of tax concessions is regressive and reform is needed to redress this inherent inequity. High income earners receive a disproportionately larger amount of the superannuation tax concessions because the difference between their marginal tax rate and the concessional superannuation rate grows as their income increases. The FSI found that 10 per cent of Australians received 38 per cent of Australia's super tax concessions, more than the combined benefit of the bottom 70 per cent of Australian's:

> Individuals with very large superannuation balances are able to benefit from tax concessions on funds that are likely to be used for purposes other than providing retirement income, such as tax-effective wealth management and estate planning... As a result, the majority of tax concessions accrue to the top 20 per cent of income earners.[16]

One way to achieve these necessary reforms would be to reduce the tax-free concession on retired people with annual superannuation incomes of more than $75,000. Incomes above $75,000 should attract the concessional rate of 15 per cent that applies to earnings in the accumulation phase. This reform would help fund better targeted measures such as increasing the Superannuation

[16] The Australian Government the Treasury, *FSI: Final Report*, November 2014, p. 137-8.

Guarantee Charge (SGC) from 9.5 to 12 per cent over time and reinstating the Low Income Superannuation Contribution (LISC).

30. The ASU believes that the Australian Government should protect the original intent of the Australian superannuation system: to complement the aged pension with better levels of retirement income and increased national savings. Also, there are other significant improvements to the current system that are needed to redress circumstances that currently leave the lowest paid Australians (disproportionately represented by women) at risk of poverty in retirement. For example, other improvements to the system are extending compulsory superannuation payments to the government funded Paid Parental Leave scheme as well as removal of the $450 monthly income threshold for exemptions on compulsory superannuation contributions.

Conclusion

31. The ASU submits that the current Default superannuation system is working extremely well in delivering financial and equity benefits for members. The ASU sees no value in the proposed "Choice of fund" legislation which simplistically assumes that it will benefit members but in fact will act to undermine the current successful system. This is an ideological piece of legislation to favour the Retail funds to the detriment of well performing Default funds.

32. Therefore, the ASU recommends that this Consultation should resolve to reject the Government's proposals and return to progressive reform that engages responsibly with real world behaviours of Australians, as well as aspirational realities of Australian taxpayers.

33. The ASU further recommends real reform in the form of removing the generous tax concessions for high income earners which are regressive in nature; instead, favour lower and middle income earners by raising the SGC from 9.5 to 12 per cent over time and reintroduce better targeted reforms such as the LISC. The SGAA should not be amended and more urgent reforms for the superannuation system would provide a better outcome for Australian taxpayers.